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Class Counsel

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

IN RE: HCV PRISON LITIGATION

Case No: 3:19-cv-00577-MMD-CLB

JOINT MOTION FOR PRELIMINARY APPROVAL OF CONSENT DECREE

Class Representatives Marty Scott Fitzgerald, Elizabeth Carley, Donald Savage, Howard White, Carl Olsen, Scott Bedard, Stephen Ciolino and Mitchell Fields (“Class Representatives”) and Defendants the State of Nevada *ex rel.* Nevada Department of Corrections, Director Charles Daniels, former Acting Director and current Deputy Director of Operations Harold Wickham, former Director James Dzurenda, former Medical Director Romeo Aranas, M.D., current Medical Director, Michael Minev, M.D. (collectively referred to as “the NDOC” or “Defendants”) (Class Representatives and Defendants are collectively referred to herein as the “Parties” or individually as a “Party”), respectfully request that this Court to preliminarily approve the Consent Decree submitted with this Motion, Exhibit 1, as well as the form of notice provided to the Class Members,

1 Exhibit 2. This Motion is made and based upon the following Memorandum of Points and
 2 Authorities, the exhibits attached hereto, the pleadings and papers on file, and any oral argument
 3 of counsel at a hearing on this matter.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 The Parties have reached a proposed resolution of this class action whereby 1) all inmates
 7 in the custody of NDOC will be tested for Hepatitis C (“HCV”) this year; 2) effectively all of the
 8 highest-priority inmates will receive Direct-Acting Antiviral (“DAA”) treatment within six months
 9 of the approval of the Consent Decree; 3) 1,200 inmates with HCV will receive DAA treatment
 10 within the first year and a total of 2,400 inmates with HCV will receive this cure within the first
 11 three years after the approval of the Consent Decree. Exhibit 1, Proposed Consent Decree. The
 12 Parties have also agreed upon a revised set of policies and practices through the amendment of
 13 MD 219 and its related documents. As many of these timelines are triggered by the effective date
 14 of the final approval of the Consent Decree, there is significant urgency. However, there are
 15 complexities and procedural formalities that need to be addressed and thus, the Parties respectfully
 16 suggest the following framework should be adopted upon preliminary approval of the Consent
 17 Decree by the Court.

18 First, the Parties’ request that after preliminary approval, the Court set a fairness hearing
 19 (“Fairness Hearing”) as soon as possible after October 22, 2020 (the date of the next Interim
 20 Finance Committee), at which the final approval of the Consent Decree will be presented and
 21 resolved in accordance with Fed. R. Civ. P. 23(e). The period between the preliminary approval of
 22 the Consent Decree and the Fairness Hearing will be referred to as the “Interim Period.”

23 Second, within ten (10) days after preliminary approval, the Parties will notify
 24 ascertainable Class Members of the proposed Consent Decree (“Notice”), Exhibit 2, and inform
 25 them that they have the opportunity to provide input to the Court and/or object to the Consent
 26 Decree during the Interim Period. The Notice will also inform the Class Members, including Class
 27 Representatives, that they are entitled to an additional opt-out period during the Interim Period.

1 Third, during the Interim Period, Defendants will seek approval of the Consent Decree
 2 from the Board of Examiners, the Interim Finance Committee, and/or the Nevada Legislature. The
 3 Consent Decree is expressly contingent upon certain governmental approvals; however, the Parties
 4 anticipate that the matter will be presented and approval hopefully obtained prior to the Fairness
 5 Hearing. In the event that the governmental approvals are not received, the Parties will notify the
 6 Court and schedule a status conference.

7 Fourth, in advance of the Fairness Hearing, the Parties will submit supplemental briefing
 8 as needed to inform the Court of the status of the governmental approvals, respond to any
 9 objections to the Consent Decree, and further support the basis for entry of the Consent Decree.

10 Based on the foregoing, this Joint Motion respectfully requests that the Court (1)
 11 preliminarily approve the Consent Decree, Ex. 1; (2) approve the form of the Notice, Ex. 2; (3) set
 12 a date for the Fairness Hearing; and (4) set a date by which Class Members must seek exclusion
 13 from the Class or file objections to the proposed Consent Decree.

14 **II. LEGAL STANDARD**

15 “The Court’s review of the proposed consent decree is informed by the public policy
 16 favoring settlement.” *Sierra Club v. McCarthy*, No. 13-CV-03953-SI, 2015 WL 889142, at *5
 17 (N.D. Cal. Mar. 2, 2015). A district court may approve a consent decree when the decree is
 18 “fair, reasonable and equitable and does not violate the law or public policy.” *Sierra Club, Inc. v.*
 19 *Elec. Controls Design, Inc.*, 909 F.2d 1350, 1355 (9th Cir. 1990). “If the decree was the product
 20 of ‘good faith, arms-length negotiations,’ it is ‘presumptively valid and the objecting party has a
 21 heavy burden of demonstrating the decree is unreasonable.’ *McCarthy*, 2015 WL 889142, at *5
 22 (quoting *United States v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990)).

23 Further, pursuant to the Prison Litigation Reform Act, 18 U.S.C. § 3626 (“PLRA”), a
 24 consent decree containing injunctive relief in a case involving “prison conditions” may not be
 25 approved unless the district court finds that the injunctive relief is (1) narrowly drawn, (2) extends
 26 no further than is necessary to correct the asserted violation of the federal right, and (3) is the least
 27 intrusive means necessary to correct the asserted violation of the federal right.

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1 **III. ARGUMENT**

2 This Court should preliminarily approve the Consent Decree because it is (1) fair, adequate,
3 and reasonable; (2) not illegal or the result of collusion, and in the public interest. Moreover, it is
4 (1) narrowly drawn, (2) extends no further than necessary to correct the asserted violation of a
5 federal right, and (3) is the least intrusive means necessary to correct the asserted violation of a
6 federal right.

7 This class action relates to the policies and practices for testing and treatment of inmates
8 in NDOC custody. Plaintiffs sought declaratory and injunctive relief, and to certify a class seeking
9 the same, from the State of Nevada's practice of withholding or delaying curative treatment to
10 inmates with chronic Hepatitis C Virus ("HCV") without medical justification. This curative
11 treatment is commonly referred to as DAA Treatment. While Defendants do not admit liability,
12 the proposed Consent Decree will expand and accelerate the testing and treatment of inmates with
13 HCV. Defendants have agreed to revise MD 219 and the related documents to remove non-medical
14 barriers to testing and treatment. Ex. 1. Defendants have also agreed to definitive timelines by
15 which a set number of inmates with HCV must be provided with DAA Treatment and this rate of
16 treatment is exponentially greater than the existing rate. *Id.*

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1 **IV. CONCLUSION**

2 For all of the foregoing reasons, the Parties request that the Court (1) preliminarily approve
 3 the Consent Decree, Ex. 1; (2) approve the form of the Notice, Ex. 2; (3) set a date for the Fairness
 4 Hearing; and (4) set a date by which Class Members must seek exclusion from the Class or file
 5 objections to the proposed Consent Decree.

6 Dated August 20, 2020.

7 McDONALD CARANO LLP

8 /s/ Adam Hosmer-Henner

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28 /s/ D. Randall Gilmer

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39 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano and that on this date, I served the within **JOINT MOTION FOR PRELIMINARY APPROVAL OF CONSENT DECREE** on the parties in said case by electronically filing via the Court's e-filing system. The participants in this case are registered e-filing users and that service will be accomplished by e-filing to the following e-filing participants:

Aaron D. Ford, Esq.
 Douglas Rands, Esq.
 Charles Odgers, Esq.
 Jared Frost, Esq.
 Nevada Attorney General's Office
 100 N. Carson Street
 Carson City, NV 89701

In addition, a true and correct copy was mailed to the party below via U.S. Mail addressed as follows:

Budd Reese, #80466
 Ely State Prison
 P.O. Box 1989
 Ely, NV 89301

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 Northern Nevada Correctional Center
 P.O. Box 7000
 Carson City, NV 89702

Howard Lee White, #24575
 Northern Nevada Correctional Center
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Carl Henry Olsen, #31147
 Lovelock Correctional Center
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Mitchell Fields, #46666
 Love Lock Correctional Center
 1200 Prison Road
 Lovelock, NV 89419

Marty Scott Fitzgerald, #73049
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3 Correctional Center
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5 Las Vegas, NV 89115

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4 Ronald J. Mulder, # 72064
5 Northern Nevada Correctional Center
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6 Carson City, NV 89702

7 Dated: August 20, 2020

8 */s/ Jill Nelson*
9 Jill Nelson

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